In the Supreme Court of the United States

OCTOBER TERM, 1977

ANGELA M. WILLIAMS AND FRANK WILLIAMS,
PETITIONERS

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners challenge the constitutionality of Section 202(d)(8) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (Supp. V) 402(d)(8), under which "after-adopted" children—those adopted after their adoptive parent became eligible for disability benefits—are not entitled to a presumption of dependency on the adoptive parent.

1. Under the Social Security Act, children of persons receiving disability benefits are entitled to child's insurance benefits if, *inter alia*, they are "dependent" on the disability beneficiary at the time of their application. 42 U.S.C. (Supp. V) 402(d)(1). Legitimate children and children adopted prior to the time the disabled beneficiary became entitled to benefits are presumed to be dependent

and thus automatically are eligible for benefits. 42 U.S.C. 402(d)(3). Children adopted after the disabled person becomes entitled to benefits are not eligible for child's benefits, however, unless they are (1) natural children or stepchildren of the disabled beneficiary; (2) children who were living with and receiving at least half their support from the disabled beneficiary for the year immediately before the period of disability began; or (3) grandchildren adopted by a grandparent with whom they had lived for a year before their application for child's benefits. 42 U.S.C. (Supp. V) 402(d)(8).

Petitioner Angela Williams was adopted by petitioner Frank Williams in January 1974, approximately two years after Frank Williams began receiving disability benefits (Pet. App. 4a-5a).[1] Frank Williams's application for child's insurance benefits on Angela's behalf was denied administratively on the basis of 42 U.S.C. (Supp. V) 402(d)(8) (Pet. App. 13a-21a). Petitioners sought review in the district court pursuant to 42 U.S.C. 405(g). The sole issue was the constitutionality of 42 U.S.C. (Supp. V) 402(d)(8), which petitioners alleged violated the Due Process Clause of the Constitution.

On April 11, 1977, the district court entered summary judgment in favor of the Secretary of Health, Education, and Welfare (Pet. App. 2a-12a). The court held that 42 U.S.C. (Supp. V) 402(d)(8) has a rational basis reasonably related to the legitimate congressional goal of minimizing the potential for abuse resulting from the adoption of children solely for the purpose of securing benefits; accordingly, the statute satisfies the test for the constitutionality of a statutory social welfare classification that was reiterated by this Court in *Weinberger* v. *Salfi*,

[1]Indeed, Angela Williams was born after Frank Williams began receiving disability benefits (Pet. App. 4a).

422 U.S. 749 (Pet. App. 5a, 8a-12a). The court of appeals affirmed for the reasons given by the district court (Pet. App. 1a).

2. The principles of *Weinberger* v. *Salfi*, *supra*, control this case. Recognizing the special need in welfare programs for prophylactic rules to guard against potential abuse, this Court held in *Salfi* that statutory rules must be sustained even if they are " 'under-inclusive' or 'over-inclusive,' " so long as Congress "could rationally have concluded" that a prophylactic rule is justified and that the standard chosen would protect against abuse. *Salfi*, *supra*, 422 U.S. at 776-777. See also *Cleland* v. *National College of Business*, No. 77-716, decided March 20, 1978; *Mathews* v. *De Castro*, 429 U.S. 181, 185.

Section 402(d)(8) deals with a relatively narrow category of situations in which there is a considerable potential for abuse—adoptions that take place after the worker's entitlement to disability benefits arises. Such adoptions, like the marriages at issue in *Salfi*, could be motivated by an improper desire to obtain benefits, and Congress therefore was entitled to devise a rule to protect against that possibility. Moreover, the statute allows after-adopted children to receive benefits if they fall into one of three categories (see page 2, *supra*) that Congress concluded offered the least chance of abuse. The classifications made by 42 U.S.C. 402(d)(8) thus are rationally related to the legitimate congressional goal of minimizing the risk of adoptions motivated by a desire to make the children eligible for benefits—benefits that are designed to replace support that children received from the wage-earner, but which children adopted after the disability began never could have received or relied on.

Jimenez v. *Weinberger*, 417 U.S. 628 (invalidating a statutory classification precluding after-born illegitimate children from receiving benefits), on which petitioners rely

(Pet. 7-9), is quite unlike this case. In *Jimenez* this Court found that the connection between the legislative end—guarding against fabrication of evidence of paternity—and the statutory classification was not rational, since there was no reason why the wage earner was any more likely to fabricate evidence of paternity for children born after his entitlement than for children born before. 417 U.S. at 636-637. By contrast, special concern about the possibility of abuse for after-adopted children is rational because the incentive for an improperly motivated adoption increases substantially once the wage earner becomes entitled to benefits.

Petitioners also rely (Pet. 9-10) on *Vlandis* v. *Kline*, 412 U.S. 441, and urge that the statute here creates an "irrebuttable presumption." But in *Salfi* this Court concluded that the *Vlandis* analysis should not be applied to social welfare statutes that do not implicate fundamental constitutional rights. In *Salfi* itself the Court concluded that a duration-of-marriage rule constitutionally could be employed to guard against marriages motivated by the prospect of receiving benefits. The same principle applies here, where the after-adopted child rule guards against adoptions motivated by the prospect of receiving benefits.[2]

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[2]Petitioners observe (Pet. 6-7) that certiorari was granted in *Morris* v. *Richardson*, 409 U.S. 841, to review the constitutionality of the predecessor of the provision at issue here, but the writ was dismissed as improvidently granted *sub nom. Morris* v. *Weinberger*, 410 U.S. 422, when the provision in question was repealed. *Salfi* was decided after the dismissal in *Morris*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1978.

DOJ-1978-06